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**IN THE
COURT OF APPEALS OF INDIANA**

NEVADA BENEDICT,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0606-CR-523
)	
STATE OF INDIANA,)	
)	
Appellee.)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION 5
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0203-FB-061064

April 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Following a bench trial, Appellant Nevada Benedict was convicted of two counts of Robbery as a Class B felony, one count of Criminal Confinement as a Class B felony, and one count of Criminal Recklessness as a Class D felony. Upon appeal, Benedict claims that the evidence is insufficient to support his convictions.

We affirm.

The record reveals that on February 18, 2002, Bradley Louzon received a telephone call from Benedict, whom he had known for approximately two weeks. Benedict and his friend came to Louzon's home, located in Marion County, at approximately seven o'clock that evening. A few minutes after Benedict arrived, Louzon went to the kitchen, and, as he returned to his living room, Benedict "rushed" him. Tr. at 11. Benedict placed Louzon in a headlock and held a knife to his throat and in doing so, cut Louzon's cheek. Benedict forced Louzon to get down on his knees, and then Benedict emptied Louzon's pockets. When Benedict told Louzon to lie upon the floor, Louzon resisted, and Benedict kicked Louzon in the head several times until he stopped resisting. Benedict also hit Louzon in the knee with a baseball bat. Benedict took money from Louzon and other individuals who were at his home. Benedict also filled a garbage bag with items from Louzon's house. Benedict told his victims that if anyone attempted to follow him, "there were going to be people waiting with pistols." Tr. at 21. After Benedict left, Louzon telephoned the police, who arrived "very promptly," i.e., within ten minutes of his call. Tr. at 22.

After speaking with the police, Louzon placed a telephone call to Benedict, and at some point, spoke with Benedict. Louzon claimed that the police had told him that if he

could get Benedict to return, they would arrest him. According to Louzon, Benedict said he would come back “[w]ith guns.” Tr. at 24. Louzon later identified Benedict from a photographic line-up as the man who had attacked and robbed him.

On March 4, 2002, the State charged Benedict with three counts of Class B felony robbery, one count of Class B felony criminal confinement, two counts of Class D felony criminal recklessness, and two counts of Class D felony theft. A bench trial was held on April 10, 2006. Prior to the start of the trial, the State moved to dismiss one count of robbery, one count of criminal confinement, and both counts of theft, which motion the trial court granted. After the presentation of the evidence, the trial court took the matter under advisement. On May 26, 2006, the trial court found Benedict guilty of the remaining four counts. The trial court then proceeded to sentence Benedict to six years on all three C felony convictions and six months on the criminal confinement conviction, all to run concurrently. Benedict filed a notice of appeal on June 22, 2006.

Upon appeal, Benedict challenges the sufficiency of the evidence supporting his convictions. In such cases, we neither reweigh evidence nor judge witness credibility. Proffit v. State, 817 N.E.2d 675, 680 (Ind. Ct. App. 2004), trans. denied. Instead, considering only the evidence which supports the convictions and the reasonable inferences to be drawn therefrom, we determine whether there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. Id.

Here, Benedict first claims that his conviction for Class D felony criminal recklessness must be reversed in that there was insufficient evidence to establish that the

act performed created a “substantial risk of bodily injury” or that the baseball bat used could be considered a “deadly weapon.” To convict Benedict of criminal recklessness as a Class D felony, the State was required to prove that he recklessly, knowingly, or intentionally performed an act which created a substantial risk of bodily harm to Louzon while armed with a deadly weapon. See Ind. Code § 35-42-2-2(b) & (c) (Burns Code Ed. Supp. 2006).¹ Here, Benedict’s argument is that there was no evidence regarding the size, weight, or composition of the baseball bat used to hit Louzon, or regarding the bat’s ability to create a substantial risk of bodily harm.

Louzon testified that, during the robbery, Benedict took a baseball bat already in the residence and used it to hit Louzon in the knee. We think that the trial court, as the trier of fact, could use the common meaning of the words “baseball bat” and conclude that such met the statutory definition of a deadly weapon, i.e., a device that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of

¹ The Class D felony charge alleged reckless conduct, not knowing or intentional conduct. It may be noted, however, that the criminal recklessness statute, I.C. § 35-42-2-2, appears to mix apples and oranges as to the requisite *mens rea* or culpability. The mental element of recklessness is a lesser degree of culpability than is intentional or knowing conduct. See Humes v. State, 426 N.E.2d 379 (Ind. 1981). Yet the statute involved states that the offense defined is committed without regard to the degree of culpability. See Henderson v. State, 534 N.E.2d 1105 (Ind. 1989) (extensively discussing the respective terms “intentionally,” “knowingly,” and “recklessly” in the context of “general intent” vis-à-vis “specific intent” crimes). More recently, our Supreme Court has cited Henderson for the proposition that the term “specific intent” does not embrace “crimes that contain the mental element of recklessness.” Richeson v. State, 704 N.E.2d 1008, 1009 n.1 (Ind. 1998). Richeson also cites to Tunstall v. State, 451 N.E.2d 1077, 1079 (Ind. 1983) which held that the crime of criminal recklessness is a general intent crime and not a specific intent crime.

It is difficult to reconcile the inclusion of the disparate categories of culpability to define the same offense. Suffice it to say that, as the statute is framed, the State may convict a defendant without proving knowing or intentional conduct. In this regard one might infer that the words “knowingly or intentionally” are surplusage. However, we need not attempt to unravel the riddle in the case before us.

causing serious bodily injury.² See Ind. Code § 35-41-1-8 (Burns Code Ed. Supp. 2006). Indeed, this court has recognized before that a baseball bat may be considered to be a deadly weapon. See Creager v. State, 737 N.E.2d 771, 778-79 (Ind. Ct. App. 2000) (holding that evidence that defendant was armed with a baseball bat and combat knife when he restrained victim was sufficient to support conviction for criminal confinement while armed with a deadly weapon), trans. denied. Furthermore, Louzon testified that Benedict hit him in the knee with the bat. From this, the trial court could reasonably have concluded that Benedict recklessly performed an act which created a substantial risk of bodily harm to Louzon. See I.C. § 35-42-2-2(b) & (c). This evidence is sufficient to support Benedict's conviction for Class B felony criminal confinement.

Benedict also claims that the evidence is insufficient to support any of his convictions in that, given the elapsed time between the robbery and when Louzon claims to have spoken to him on the phone, there is simply no way he could have been the one who attacked and robbed the victims. Benedict notes that there was testimony indicating that Louzon called the police at precisely 7:36 p.m. and that the first police officers arrived at 7:40 p.m. Benedict also notes that Louzon testified that he called the police soon after the attackers left and that the police arrived promptly. Benedict further notes that Louzon testified that he called a telephone number to reach Benedict and ultimately did speak with Benedict after the attack. Because an officer who arrived on the scene at

² "Serious bodily injury" is in turn defined as bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent or protracted loss or impairment of the function of a bodily member or organ, or loss of a fetus. Ind. Code § 35-41-1-25 (Burns Code Ed. Repl. 2004).

7:46 p.m. testified that he did not recall Louzon placing such a telephone call and that he would not allow a victim to telephone a suspect, Benedict claims that Louzon must have telephoned Benedict no later than 7:46 p.m., i.e., before this officer arrived. Benedict's argument continues that, because the location of Louzon's house and the location of the house Louzon called and claimed to have spoken with Benedict are over twenty miles apart, it would have been impossible for him to have traveled this distance in the few minutes which elapsed between the attack and the telephone call. There are several problems with Benedict's argument.

Initially, we note that Benedict asks us to look to evidence which does not support the convictions, which we will not do. See Proffit, 817 N.E.2d at 680. Moreover, as noted by the State, Benedict bases much of his version of events upon evidence his trial counsel elicited from Louzon upon cross-examination regarding the precise timing of events which occurred four years prior to trial. Indeed, Benedict's trial counsel asked questions regarding the times involved, and asked Louzon if he agreed with the times. In essence, Louzon's counsel got Louzon to agree to a timeline which made it almost impossible for him to have been the attacker and the person with whom Louzon spoke on the phone. However adroit this trial strategy may have been, the trial court was by no means bound to accept Louzon's testimony with regard to the precise timing of the events. Indeed, the trial court, as the trier of fact, could have concluded that Louzon was mistaken about the timing of the calls or even about the identity of the person with whom he spoke on the telephone.

The evidence supporting the judgment reveals that Louzon, who had known Benedict for approximately two weeks, identified Benedict as the man who attacked and robbed him, and from this the trial court could reasonably conclude that Benedict was the perpetrator of these crimes. Benedict's attack upon the sufficiency of the evidence supporting his convictions must therefore fail.

The judgment of the trial court is affirmed.

SHARPNACK, J., and CRONE, J., concur.